IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 592 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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AMIRUDDIN BABUBHAI ANSARI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 592 of 1989

MR LN MEDIPALLY for Petitioner No. 1 Absent

MR ND GOHIL, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 14/08/2001

ORAL JUDGEMENT

This is an appeal of 1989, which is listed today for the 9th time. It is listed at serial No.1 of running board of 13th Aug. 2001. When this matter was called out in the second sitting after recess, the learned Counsel

for the appellant was not present, therefore, in his absence the appeal is heard and decided with the due assistance of learned APP Shri ND Gohil for the respondent State.

On 1st October, 1988 at 6 P.M, the appellant accused was coming in his auto-rickshaw No. GTH 1886 from Astodia gate side. Traffic Police Sub-Inspector Shri Dalpatsinh Jesinh stopped the rickshaw as it was emitting excessive smoke. It was suspected that accused made use of kerosene with petrol as fuel. There and then panchnama was prepared and sample of fuel was taken from his auto-rickshaw and sent it to the Forensic Science Labroratory (FSL). After completing the investigation, charge-sheet was submitted against the appellant accused and he was tried for the offence under Section 7 of the Essential Commodities Act for commiting breach of the Restriction on Use of Kerosene Order, 1966, framed under Section 3 of the Essential Commodities Act.

To prove its case, the prosecution examined Traffic Police Sub Inspector Shri Dalpatsinh Jesabhai Ex.3 and one Police Constable Ramangiri Chandugiri Ex.5. Himmatlal Mohanlal was examined as panch witness P.W 4. After considering the evidence of the prosecution witnesses as well as the defence of the accused, the learned Special Judge came to the conclusion that the prosecution has proved its case beyond reasonable doubt and therefore, by judgement and order dated 31.8.1989, the learned Special Judge convicted the accused for the offence under Section 7 of the Essential Commodities Act and sentenced him to suffer 3 months RI.

Having carefully gone through the evidence of the complainant Dalpatsinh Jesinh, Traffic PSI Ex.3, I am of the considered opinion that there is a material contradiction in his evidence regarding time. It is true that in the instant case there is a difference of 15 minutes only, but in some cases difference of some hours may not make material difference, but in some cases every minute is valuable. In the instant case admittedly no written order is produced by him, which prompted the Traffic Inspector for proceeding to the ST Bus Stand Traffic Circle. This creates doubt about the presence of the complainant at the relevant point of time. Similarly, evidence of Police Constable Ramangiri Chandugiri is also not wholly reliable. He was a Police Constable at Paldi Traffic Circle and his presence at the place of incident at the relevant point of time is highly doubtful. Within ten minutes one cannot reach the distance i.e in a thickly populated area of ST Bus Stand,

Ahmedabad, from Paldi Traffic circle. Being Police Constable he was expected to travel by bus but to show that he was present within 10 minutes, he stated that he travelled in auto-rickshaw and that auto-rickshaw driver was not examined in this case. Admittedly number of independent witnesses were present, but none of them has been examined.

No reliance can be placed upon the evidence of panch witness because he was having pan galla and he had to oblige Police otherwise it would be difficult for him to run his pan galla at odd hours. It is true that the defence of the accused that he got the fuel filled-in from some petrol pump and he had not mixed kerosene in the petrol is not at all reasonable or proper. However, on the weakness of the defence, the accused cannot be convicted. The prosecution has to prove the case beyond reasonable doubt.

In view of the above discussion, this appeal is allowed and the impugned judgement and order of conviction and sentence dated 31st August, 1989 delivered by the learned Special Judge in Special Case No. 7/89 is hereby quashed and set aside. The accused is on bail. His bail bond stands cancelled.

(B.J.Shethna, J.)

*/Mohandas